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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,444	02/27/2004	David Shaver	48550/P003US/10309896	5009
29053	7590	12/28/2004		
DALLAS OFFICE OF FULBRIGHT & JAWORSKI L.L.P. 2200 ROSS AVENUE SUITE 2800 DALLAS, TX 75201-2784				
EXAMINER NGUYEN, SON T				
ART UNIT 3643		PAPER NUMBER		

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/789,444	SHAVER ET AL.
	Examiner	Art Unit
	Son T. Nguyen	3643

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 27 February 2004.

2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-10 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because refs. 100 & 200 are designated as growth medium but do not appeared to be so on the drawings. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1,3-6,9** are rejected under 35 U.S.C. 102(b) as being anticipated by Boucher et al. (US 4176494).

For claim 1, Boucher et al. teach a method for growing a plant comprising the steps of: planting said plant in a growth medium (as shown in fig. 1 and in col. 2, lines 11-15)); twisting at least two plant vines of said plant together to form a growing unit (as shown in fig. 1); and maintaining said growing unit during the growth and production cycles of said plant (inherent to maintain plant growth throughout production cycles to produce healthy plant).

For claim 3, Boucher et al. teach wherein said twisting step comprises the step of twisting said at least two plant vines together around a flexible material 1 (col. 1, line 64).

For claim 4, Boucher et al. teach a yield maximization system comprising: a growth medium for sustaining the growth of a plant, said plant having vines growing from a single root system (col. 2, lines 11-15 teach a plant such as tomato and shown in fig. 1 the tomato plant having vines that are twisted around the stake 1); and supports 1 for twisting at least pairs of vines around individual ones of said supports.

For claim 5, Boucher et al. teach wherein said supports comprise: a flexible material 1 (col. 1, line 64) having one end tied around the base of said plant (fig. 1, near ref. 1 at clasp 3) and the opposite end supported above said vines (fig. 1).

For claim 6, Boucher et al. teach a method for growing a plant, said method comprising: twisting at least two plant vines of said plant around a flexible material 1 (as mentioned above); and securing said flexible material, wherein said at least two plant vines are twisted vertically around said flexible material.

For claim 9, Boucher et al. teach a method for growing a plant comprising: planting a plant in a growth medium, wherein plant vines are produced from said plant (tomato plant); and attaching at least a pair of said plant vines to one another with a flexible material 1. See fig. 1.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 2 & 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Boucher et al. (as above).

For claim 2, Boucher et al. teach wherein said maintaining step comprises the steps of: securing one end of a flexible material at the base of said plant (fig. 1 near ref. 1). However, Boucher et al. are silent about twisting said flexible material around said growing unit. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of twisting said flexible material around said growing unit in place of twisting the vines around the flexible material as taught by Boucher et al., since it is has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

For claim 10, Boucher et al. teach wherein said attaching step comprises; securing one end of said flexible material at the base of said plant (fig. 1 near ref. 1); and securing the opposite end of said flexible material to the plant (fig. 1, the top most clasp 3). However, Boucher et al. are silent about securing the opposite end of said flexible material at a height taller than said plant. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of securing the opposite end of said flexible material at a height taller than said plant in the method of Boucher et al., in order to fully support the whole height of the plant.

6. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Boucher et al. in view of Mazura (GB 2193621A).

Mazura teaches a string 1,2 to support vines. It would have been an obvious substitution of functional equivalent to substitute the stake of Boucher et al. with a string

as taught by Mazura, since both types of support would perform to support vines of the plant.

7. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Boucher et al. in view of Tuffli (US 3739523).

Tuffli teaches a rod 34 to support vines. It would have been an obvious substitution of functional equivalent to substitute the stake of Boucher et al. with a rod as taught by Tuffli, since both types of support would perform to support vines of the plant.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Fri from 9:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen

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Primary Examiner  
Art Unit 3643

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